

1 Rule 3.8. Special Responsibilities of a Prosecutor.

2 The prosecutor in a criminal case shall:

3 (a) Refrain from prosecuting a charge that the prosecutor knows is not supported by
4 probable cause;

5 (b) Make reasonable efforts to [as](#)ensure that the accused has been advised of the
6 right to, and the procedure for obtaining, counsel and has been given reasonable
7 opportunity to obtain counsel;

8 (c) Not seek to obtain from an unrepresented accused a waiver of important pretrial
9 rights, such as the right to a preliminary hearing;

10 (d) Make timely disclosure to the defense of all evidence or information known to the
11 prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in
12 connection with sentencing, disclose to the defense all unprivileged mitigating
13 information known to the prosecutor, except when the prosecutor is relieved of this
14 responsibility by a protective order of the tribunal; and

15 (e) Exercise reasonable care to prevent investigators, law enforcement personnel,
16 employees or other persons assisting or associated with the prosecutor in a criminal
17 case from making an extrajudicial statement that the prosecutor would be prohibited
18 from making under Rule 3.6.

19 Comment

20 [\[1\]](#) A prosecutor has the responsibility of a minister of justice and not simply that of
21 an advocate. This responsibility carries with it specific obligations to see that the
22 defendant is accorded procedural justice and that guilt is decided upon the basis of
23 sufficient evidence. Precisely how far the prosecutor is required to go in this direction is
24 a matter of debate and varies in different jurisdictions. See Rule 3.3(d), governing ex
25 parte proceedings, among which grand jury proceedings are included. Applicable law
26 may require other measures by the prosecutor and knowing disregard of those
27 obligations or systematic abuse of prosecutorial discretion could constitute a violation of
28 Rule 8.4.

29 [\[2\]](#) Paragraph (c) does not apply to an accused appearing pro se with the approval
30 of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly
31 waived the rights to counsel and silence.

32 [3] The exception in paragraph (d) recognizes that a prosecutor may seek an
33 appropriate protective order from the tribunal if disclosure of information to the defense
34 could result in substantial harm to an individual or to the public interest.

35 [3a] Utah has not adopted the ABA version of Rule 3.8. ABA Model Rule 3.8(d),
36 requiring the prosecution to inform the tribunal of mitigating information related to
37 sentencing, creates an unreasonable burden and is not deemed workable where the
38 same information is required to be disclosed to the defense counsel who should be in
39 the best position to decide what to present to the tribunal. The ABA's paragraph (e)
40 regarding limitations on subpoenaing lawyers to grand juries or other legal proceedings
41 is viewed as unnecessary, as there are adequate safeguards in place for federal
42 prosecutors, and the Utah criminal justice system does not typically use the grand jury
43 procedure. Utah has not adopted the ABA's proposed paragraph (f), because the
44 changes are either unnecessary because of, or are potentially inconsistent with, the
45 provisions of Rule 3.6.